

109TH CONGRESS
1ST SESSION

S. 1256

To require the Secretary of Homeland Security to develop regulations regarding the transportation of extremely hazardous materials, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 16, 2005

Mr. BIDEN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require the Secretary of Homeland Security to develop regulations regarding the transportation of extremely hazardous materials, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Hazardous Materials Vulnerability Reduction Act of
6 2005”.

7 (b) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) Congress has specifically given the Depart-
2 ment of Homeland Security, working in conjunction
3 with the Department of Transportation and other
4 Federal agencies, the primary authority for the secu-
5 rity of the United States transportation sector, in-
6 cluding passenger and freight rail.

7 (2) This authority includes the responsibility to
8 protect American citizens from terrorist incidents re-
9 lated to the transport by rail of extremely hazardous
10 materials.

11 (3) Federal agencies have determined that haz-
12 ardous materials can be used as tools of destruction
13 and terror and that extremely hazardous materials
14 are particularly vulnerable to sabotage or misuse
15 during transport.

16 (4) The Federal Bureau of Investigation and
17 the Central Intelligence Agency have found evidence
18 suggesting that chemical tankers used to transport
19 and store extremely hazardous chemicals have been
20 targeted by terrorist groups.

21 (5) Rail shipments of extremely hazardous ma-
22 terials are often routed through highly attractive
23 targets and densely populated areas, including with-
24 in a few miles of the White House and United
25 States Capitol.

1 (6) According to security experts, certain ex-
2 tremely hazardous materials present a mass casualty
3 terrorist potential rivaled only by improvised nuclear
4 devices, certain acts of bioterrorism, and the collapse
5 of large occupied buildings.

6 (7) A report by the Chlorine Institute found
7 that a 90-ton rail tanker, if successfully targeted by
8 an explosive device, could cause a catastrophic re-
9 lease of an extremely hazardous material, creating a
10 toxic cloud 40 miles long and 10 miles wide.

11 (8) The Environmental Protection Agency esti-
12 mates that in an urban area a toxic cloud could ex-
13 tend for 14 miles.

14 (9) The United States Naval Research Labora-
15 tories concluded that a toxic plume of this type, cre-
16 ated while there was a public event on the National
17 Mall, could kill or injure up to 100,000 people in
18 less than 30 minutes.

19 (10) According to security experts, rail ship-
20 ments of extremely hazardous materials are particu-
21 larly vulnerable and dangerous, however the Federal
22 Government has made no material reduction in the
23 inherent vulnerability of hazardous chemical targets
24 inside the United States.

1 (11) While the safety record related to rail
2 shipments of hazardous materials is very good, re-
3 cent accidental releases of extremely hazardous ma-
4 terials in rural South Carolina and San Antonio,
5 Texas, demonstrate the fatal danger posed by ex-
6 tremely hazardous materials.

7 (12) Security experts have determined that re-
8 routing these rail shipments is the only way to im-
9 mediately eliminate this danger in high threat areas,
10 which currently puts hundreds of thousands of peo-
11 ple at risk.

12 (13) Security experts have determined that the
13 primary benefit of re-routing the shipment of ex-
14 tremely hazardous materials is a reduction in the
15 number of people that would be exposed to the dead-
16 ly impact of the release due to an attack, and the
17 principal cost would be the additional operating ex-
18 pense associated with possible increase inhaul for the
19 shipment of extremely hazardous materials.

20 (14) Less than 5 percent of all hazardous mate-
21 rials shipped by rail will meet the definition of ex-
22 tremely hazardous materials under this Act.

23 **SEC. 2. DEFINITIONS.**

24 In this Act, the following definitions apply:

1 (1) EXTREMELY HAZARDOUS MATERIAL.—The
2 term “extremely hazardous material” means any
3 chemical, toxin, or other material being shipped or
4 stored in sufficient quantities to represent an acute
5 health threat or have a high likelihood of causing in-
6 juries, casualties, or economic damage if successfully
7 targeted by a terrorist attack, including materials
8 that—

9 (A) are—

- 10 (i) toxic by inhalation;
11 (ii) extremely flammable; or
12 (iii) highly explosive;

13 (B) contain high level nuclear waste; or

14 (C) are otherwise designated by the Sec-
15 retary as extremely hazardous.

16 (2) HIGH THREAT CORRIDOR.—

17 (A) IN GENERAL.—The term “high threat
18 corridor” means a geographic area that has
19 been designated by the Secretary as particularly
20 vulnerable to damage from the release of ex-
21 tremely hazardous materials, including—

- 22 (i) large populations centers;
23 (ii) areas important to national secu-
24 rity;

1 (iii) areas that terrorists may be par-
2 ticularly likely to attack; or

3 (iv) any other area designated by the
4 Secretary as vulnerable to damage from
5 the rail shipment or storage of extremely
6 hazardous materials.

7 (B) OTHER AREAS.—

8 (i) IN GENERAL.—Any city that is not
9 designated as a high threat corridor under
10 subparagraph (A) may file a petition with
11 the Secretary to be so designated.

12 (ii) PROCEDURE.—The Secretary shall
13 establish, by rule, regulation, or order, pro-
14 cedures for petitions under clause (i), in-
15 cluding—

16 (I) designating the local official
17 eligible to file a petition;

18 (II) establishing the criteria a
19 city shall include in a petition;

20 (III) allowing a city to submit
21 evidence supporting its petition; and

22 (IV) requiring the Secretary to
23 rule on the petition not later than 60
24 days after the date of submission of
25 the petition.

1 (iii) NOTICE.—The Secretary’s deci-
2 sion regarding any petition under clause (i)
3 shall be communicated to the requesting
4 city, the Governor of the State in which
5 the city is located, and the Senators and
6 Members of the House of Representatives
7 that represent the State in which the city
8 is located.

9 (3) SECRETARY.—The term “Secretary” means
10 the Secretary of Homeland Security or the Sec-
11 retary’s designee.

12 (4) STORAGE.—The term “storage” means any
13 temporary or long-term storage of extremely haz-
14 ardous materials in rail tankers or any other me-
15 dium utilized to transport extremely hazardous ma-
16 terials by rail.

17 **SEC. 3. REGULATIONS FOR TRANSPORT OF EXTREMELY**
18 **HAZARDOUS MATERIALS.**

19 (a) PURPOSES OF REGULATIONS.—The regulations
20 issued under this section shall establish a national, risk-
21 based policy for extremely hazardous materials trans-
22 ported by rail or being stored. To the extent the Secretary
23 determines appropriate, the regulations issued under this
24 section shall be consistent with other Federal, State, and

1 local regulations and international agreements relating to
2 shipping or storing extremely hazardous materials.

3 (b) ISSUANCE OF REGULATIONS.—Not later than 90
4 days after the date of enactment of this Act, the Secretary
5 shall issue, after notice and opportunity for public com-
6 ment, regulations concerning the rail shipment and stor-
7 age of extremely hazardous materials by owners and oper-
8 ators of railroads. In developing such regulations, the Sec-
9 retary shall consult with other Federal, State, and local
10 government entities, security experts, representatives of
11 the hazardous materials rail shipping industry, labor
12 unions representing persons who work with hazardous ma-
13 terials in the rail shipping industry, and other interested
14 persons, including private sector interest groups.

15 (c) REQUIREMENTS.—The regulations issued under
16 this section shall—

17 (1) include a list of the high threat corridors
18 designated by the Secretary;

19 (2) contain the criteria used by the Secretary to
20 determine whether an area qualifies as a high threat
21 corridor;

22 (3) include a list of extremely hazardous mate-
23 rials;

24 (4) establish protocols for owners and operators
25 of railroads that ship extremely hazardous materials

1 regarding notifying all governors, mayors, and other
2 designated officials and local emergency responders
3 in a high threat corridor of the quantity and type of
4 extremely hazardous materials that are transported
5 by rail through the high threat corridor;

6 (5) require reports regarding the transport by
7 railroad of extremely hazardous materials by the
8 Secretary to local governmental officials designated
9 by the Secretary, and Local Emergency Planning
10 Committees, established under the Emergency Plan-
11 ning and Community Right to Know Act of 1986
12 (42 U.S.C. 11001 et seq.);

13 (6) establish protocols for the coordination of
14 Federal, State, and local law enforcement authorities
15 in creating a plan to respond to a terrorist attack,
16 sabotage, or accident involving a rail shipment of ex-
17 tremely hazardous materials that causes the release
18 of such materials;

19 (7) require that any rail shipment containing
20 extremely hazardous materials be re-routed around
21 any high threat corridor; and

22 (8) establish standards for the Secretary to
23 grant exceptions to the re-routing requirement under
24 paragraph (7).

25 (d) HIGH THREAT CORRIDORS.—

1 (1) IN GENERAL.—The criteria under sub-
2 section (c)(2) for determining whether an area quali-
3 fies as a high threat corridor may be the same cri-
4 teria used for the distribution of funds under the
5 Urban Area Security Initiative program.

6 (2) INITIAL LIST.—If the Secretary is unable to
7 complete the review necessary to determine which
8 areas should be designated as high threat corridors
9 within 90 days after the date of enactment of this
10 Act, the initial list shall be the cities that receive
11 funding under the Urban Areas Security Initiative
12 Program in fiscal year 2004.

13 (e) EXTREMELY HAZARDOUS MATERIALS LIST.—If
14 the Secretary is unable to complete the review necessary
15 to determine which materials should be designated ex-
16 tremely hazardous materials under subsection (c)(3) with-
17 in 90 days of the date of enactment of this Act, the initial
18 list shall include—

19 (1) explosives classified as Class 1, Division 1.1,
20 or Class 1, Division 1.2, under section 173.2 of title
21 49, Code of Federal Regulations, in a quantity
22 greater than 500 kilograms;

23 (2) flammable gasses classified as Class 2, Divi-
24 sion 2.1, under section 173.2 of title 49, Code of

1 Federal Regulations, in a quantity greater than
2 10,000 liters;

3 (3) poisonous gasses classified as Class 2, Divi-
4 sion 2.3, under section 173.2 of title 49, Code of
5 Federal Regulations, that are also assigned to Haz-
6 ard Zones A or B under section 173.116 of title 49,
7 Code of Federal Regulations, in a quantity greater
8 than 500 liters;

9 (4) poisonous materials, other than gasses, clas-
10 sified as Class 6, Division 6.1, under section 173.2
11 of title 49, Code of Federal Regulations, that are
12 also assigned to Hazard Zones A or B under section
13 173.116 of title 49, Code of Federal Regulations, in
14 a quantity greater than 1,000 kilograms; and

15 (5) anhydrous ammonia classified as Class 2,
16 Division 2.2, under section 173.2 of title 49, Code
17 of Federal Regulations, in a quantity greater than
18 1,000 kilograms.

19 (f) NOTIFICATION.—

20 (1) IN GENERAL.—The protocols under sub-
21 section (c)(4) shall establish the required frequency
22 of reporting by an owner and operator of a railroad
23 to the Governors, Mayors, and other designated offi-
24 cials and local emergency responders in a high
25 threat corridor.

1 (2) REPORTS TO SECRETARY.—The protocols
2 under subsection (c)(4) shall require owners and op-
3 erators of railroad to make annual reports to the
4 Secretary regarding the transportation of extremely
5 hazardous materials, and to make quarterly updates
6 if there has been any significant change in the type,
7 quantity, or frequency of shipments.

8 (3) CONSIDERATIONS.—In developing protocols
9 under subsection (c)(4), the Secretary shall consider
10 both the security needs of the United States and the
11 interests of State and local governmental officials.

12 (g) REPORTS.—

13 (1) FREQUENCY.—

14 (A) IN GENERAL.—The Secretary shall
15 make an annual report to local governmental
16 officials and Local Emergency Planning Com-
17 mittees under subsection (c)(5).

18 (B) UPDATES.—If there has been any sig-
19 nificant change in the type, quantity, or fre-
20 quency of rail shipments in a geographic area,
21 the Secretary shall make a quarterly update re-
22 port to local governmental officials and Local
23 Emergency Planning Committees in that geo-
24 graphic area.

1 (2) CONTENTS.—Each report made under sub-
2 section (c)(5) shall incorporate information from the
3 reports under subsection (c)(4) and shall include—

4 (A) a good-faith estimate of the total num-
5 ber of rail cars containing extremely hazardous
6 materials shipped through or stored in each
7 metropolitan statistical area; and

8 (B) if a release from a railcar carrying or
9 storing extremely hazardous materials is likely
10 to harm persons or property beyond the prop-
11 erty of the owner or operator of the railroad, a
12 risk management plan that provides—

13 (i) a hazard assessment of the poten-
14 tial effects of a release of the extremely
15 hazardous materials, including—

16 (I) an estimate of the potential
17 release quantities; and

18 (II) a determination of the down-
19 wind effects, including the potential
20 exposures to affected populations;

21 (ii) a program to prevent a release of
22 extremely hazardous materials, including—

23 (I) security precautions;

24 (II) monitoring programs; and

1 (III) employee training measures
2 utilized; and
3 (iii) an emergency response program
4 that provides for specific actions to be
5 taken in response to the release of an ex-
6 tremely hazardous material, including pro-
7 cedures for informing the public and Fed-
8 eral, State, and local agencies responsible
9 for responding to the release of an ex-
10 tremely hazardous material.

11 (h) TRANSPORTATION AND STORAGE OF EXTREMELY
12 HAZARDOUS MATERIALS THROUGH HIGH THREAT COR-
13 RIDORS.—

14 (1) IN GENERAL.—The standards for the Sec-
15 retary to grant exceptions under subsection (c)(8)
16 shall require a finding of special circumstances by
17 the Secretary, including that—

18 (A) the shipment originates in or is des-
19 tined to the high threat corridor;

20 (B) there is no practical alternate route;

21 (C) there is an unanticipated, temporary
22 emergency that threatens the lives of people in
23 the high threat corridor; or

24 (D) there would be no harm to persons or
25 property beyond the property of the owner or

1 operator of the railroad in the event of a suc-
 2 cessful terrorist attack on the shipment.

3 (2) PRACTICAL ALTERNATE ROUTES.—Whether
 4 a shipper must utilize an interchange agreement or
 5 otherwise utilize a system of tracks or facilities
 6 owned by another operator shall not be considered
 7 by the Secretary in determining whether there is a
 8 practical alternate route under paragraph (1)(B).

9 (3) GRANT OF EXCEPTION.—If the Secretary
 10 grants an exception under subsection (c)(8)—

11 (A) the extremely hazardous material may
 12 not be stored in the high threat corridor, in-
 13 cluding under a leased track or rail siding
 14 agreement; and

15 (B) the Secretary shall notify Federal,
 16 State, and local law enforcement and first re-
 17 sponder agencies (including, if applicable, tran-
 18 sit, railroad, or port authority agencies) within
 19 the high threat corridor.

20 **SEC. 4. SAFETY TRAINING.**

21 (a) HOMELAND SECURITY GRANT PROGRAM.—

22 (1) IN GENERAL.—The Secretary may award
 23 grants to local governments and owners and opera-
 24 tors of railroads to conduct training regarding safety

1 procedures for handling and responding to emer-
2 gencies involving extremely hazardous materials.

3 (2) USE OF FUNDS.—Grants under this sub-
4 section may be used to provide training and pur-
5 chase safety equipment for individuals who—

6 (A) transport, load, unload, or are other-
7 wise involved in the shipment of extremely haz-
8 ardous materials;

9 (B) would respond to an accident or inci-
10 dent involving a shipment of extremely haz-
11 ardous materials; and

12 (C) would repair transportation equipment
13 and facilities in the event of such an accident
14 or incident.

15 (3) APPLICATION.—A local government or
16 owner or operator of a railroad desiring a grant
17 under this subsection shall submit an application at
18 such time, in such manner, and accompanied by
19 such information as the Secretary may reasonably
20 establish.

21 (4) AUTHORIZATION OF APPROPRIATIONS.—
22 There are authorized to be appropriated
23 \$100,000,000 to carry out this subsection.

24 (b) RAILWAY HAZMAT TRAINING PROGRAM.—

1 (1) PROGRAM.—Section 5116(j) of title 49,
2 United States Code, is amended by adding at the
3 end the following:

4 “(6) RAILWAY HAZMAT TRAINING PROGRAM.—

5 “(A) In order to further the purposes of
6 subsection (b), the Secretary of Transportation
7 shall, subject to the availability of funds, make
8 grants to national nonprofit employee organiza-
9 tions with experience in conducting training re-
10 garding the transportation of hazardous mate-
11 rials on railways for the purpose of training
12 railway workers who are likely to discover, wit-
13 ness, or otherwise identify a release of ex-
14 tremely hazardous materials and to prevent or
15 respond appropriately to the incident.

16 “(B) The Secretary of Transportation shall
17 delegate authority for the administration of the
18 Railway Hazmat Training Program to the Di-
19 rector of the National Institute of Environ-
20 mental Health Sciences under subsection (g). In
21 administering the program under this para-
22 graph, the Director of the National Institute of
23 Environmental Health Sciences shall consult
24 closely with the Secretary of Transportation
25 and the Secretary of Homeland Security.”.

1 (2) AUTHORIZATION OF APPROPRIATIONS.—

2 Section 5127 of title 49, United States Code, is
3 amended by adding at the end the following:

4 “(h) RAILWAY HAZMAT TRAINING PROGRAM.—There
5 are authorized to be appropriated \$10,000,000 for each
6 of fiscal years 2006, 2007, and 2008 to carry out section
7 5116(j)(6).”.

8 **SEC. 5. RESEARCH AND DEVELOPMENT.**

9 (a) TRANSPORT.—

10 (1) IN GENERAL.—Not later than 90 days after
11 the date of enactment of this Act, the Secretary
12 shall conduct a study of the benefits and availability
13 of technology and procedures that may be utilized
14 to—

15 (A) reduce the likelihood of a terrorist at-
16 tack on a rail shipment of extremely hazardous
17 materials;

18 (B) reduce the likelihood of a catastrophic
19 release of extremely hazardous materials in the
20 event of a terrorist attack; and

21 (C) enhance the ability of first responders
22 to respond to a terrorist attack on a rail ship-
23 ment of extremely hazardous materials and
24 other required activities in the event of such an
25 attack.

1 (2) MATTERS STUDIED.—The study conducted
2 under this subsection shall include the evaluation
3 of—

4 (A) whether safer alternatives to 90-ton
5 rail tankers exist;

6 (B) the feasibility of requiring chemical
7 shippers to electronically track the movements
8 of all shipments of extremely hazardous mate-
9 rials and report this information to the Depart-
10 ment of Homeland Security on an ongoing basis
11 as such shipments are transported; and

12 (C) the feasibility of utilizing finger-print
13 based access controls for all chemical convey-
14 ances.

15 (3) REPORTING.—Not later than 180 days after
16 the date of enactment of this Act, the Secretary
17 shall submit a report to Congress describing the
18 findings of the study conducted under this sub-
19 section, which shall include recommendations and
20 cost estimates for securing shipments of extremely
21 hazardous materials.

22 (b) PHYSICAL SECURITY.—

23 (1) IN GENERAL.—Not later than 90 days after
24 the date of enactment of this Act, the Secretary
25 shall conduct a study of the physical security meas-

1 ures available for rail shipments of extremely haz-
2 ardous materials that will reduce the risk of leakage
3 or release in the event of a terrorist attack or sabo-
4 tage.

5 (2) MATTERS STUDIED.—The study conducted
6 under this subsection shall consider the use of pas-
7 sive secondary containment of tanker valves, addi-
8 tional security force personnel, surveillance tech-
9 nologies, barriers, decoy rail cars, and methods to
10 minimize delays during shipping.

11 (3) REPORTING.—Not later than 180 days after
12 the date of enactment of this Act, the Secretary
13 shall submit a report to Congress describing the
14 findings of the study conducted under this sub-
15 section, which shall contain recommendations and
16 cost estimates for securing shipments of extremely
17 hazardous materials.

18 (c) LEASED TRACK STORAGE ARRANGEMENTS.—

19 (1) IN GENERAL.—Not later than 90 days after
20 enactment of this Act, the Secretary shall conduct a
21 study of available alternatives to storing extremely
22 hazardous materials in or on leased track facilities.

23 (2) MATTERS STUDIED.—The study conducted
24 under this subsection shall—

1 (A) evaluate the extent of the use of leased
2 track facilities and the security measures that
3 should be taken to secure leased track facilities;
4 and

5 (B) assess means to limit the consequences
6 of an attack on extremely hazardous materials
7 stored on leased track facilities to nearby com-
8 munities.

9 (3) REPORT.—Not later than 180 days after
10 the date of enactment of this Act, the Secretary
11 shall submit a report to Congress describing the
12 findings of the study conducted under this sub-
13 section, which shall contain recommendations and
14 cost estimates for securing shipments of extremely
15 hazardous materials.

16 **SEC. 6. WHISTLEBLOWER PROTECTION.**

17 (a) PROHIBITION AGAINST DISCRIMINATION.—No
18 owner or operator of a railroad may discharge or otherwise
19 discriminate against any employee with respect to com-
20 pensation, terms, conditions, or privileges of employment
21 because the employee (or any person acting pursuant to
22 the request of the employee) provided information to the
23 Secretary, the Attorney General, or any Federal super-
24 visory agency regarding a possible violation of any provi-
25 sion of this Act by the owner or operator of a railroad

1 or any director, officer, or employee of an owner or oper-
2 ator of a railroad.

3 (b) ENFORCEMENT.—Any employee or former em-
4 ployee who believes that such employee has been dis-
5 charged or discriminated against in violation of subsection
6 (a) may file a civil action in the appropriate United States
7 district court before the end of the 2-year period beginning
8 on the date of such discharge or discrimination.

9 (c) REMEDIES.—If the district court determines that
10 a violation has occurred, the court may order the owner
11 or operator of a railroad that committed the violation to—

12 (1) reinstate the employee to the employee's
13 former position;

14 (2) pay compensatory damages; or

15 (3) take other appropriate actions to remedy
16 any past discrimination.

17 (d) LIMITATION.—The protections of this section
18 shall not apply to any employee who—

19 (1) deliberately causes or participates in the al-
20 leged violation of law or regulation; or

21 (2) knowingly or recklessly provides substan-
22 tially false information to the Secretary, the Attor-
23 ney General, or any Federal supervisory agency.

24 **SEC. 7. PENALTIES.**

25 (a) RIGHT OF ACTION.—

1 (1) IN GENERAL.—Any State or local govern-
 2 ment may bring a civil action in a United States dis-
 3 trict court for redress of injuries caused by a viola-
 4 tion of this Act against any person (other than an
 5 individual) who transports, loads, unloads, or is oth-
 6 erwise involved in the shipping of extremely haz-
 7 ardous materials by rail and who violated this Act.

8 (2) RELIEF.—In an action under paragraph
 9 (1), a State or local government may seek, for each
 10 violation of this Act—

11 (A) an order for injunctive relief; and

12 (B) a civil penalty of not more than
 13 \$1,000,000.

14 (b) ADMINISTRATIVE PENALTIES.—

15 (1) IN GENERAL.—The Secretary may issue an
 16 order imposing an administrative penalty of not
 17 more than \$1,000,000 for each failure by a person
 18 (other than an individual) who transports, loads, un-
 19 loads, or is otherwise involved in the shipping of ex-
 20 tremely hazardous materials to comply with this Act.

21 (2) NOTICE AND HEARING.—Before issuing an
 22 order under paragraph (1), the Secretary shall pro-
 23 vide the person who allegedly violated this Act—

24 (A) written notice of the proposed order;

25 and

1 (B) the opportunity to request, not later
2 than 30 days after the date on which the per-
3 son received the notice, a hearing on the pro-
4 posed order.

5 (3) PROCEDURES.—Not later than 90 days
6 after the date of enactment of this Act, the Sec-
7 retary shall issue regulations establishing procedures
8 for administrative hearings and the appropriate re-
9 view of penalties issued under this subsection, in-
10 cluding establishing deadlines.

○